

REMARKS

By the present amendment claim 1 has been amended and claim 7 has been canceled. Claims remaining in the application are claims 1-3, 6, 8-12, 34, and 35. Accompanying this response is a second declaration under 37 C.F.R. §1.132 submitting supporting data evidencing differences between the Alderman product and the product of the present invention.

The Examiner has rejected claims 1-3, 6-12, and 34-35 under 35 U.S.C. §103(a) as being unpatentable over Alderman in view of Nakamura et al. and the book "Wheat Chemistry and Technology". The Examiner relies on Alderman as disclosing a cooked-puffed waxy cereal food formed into ready to eat cereal foods of the breakfast type. The Examiner relies on Nakamura et al. for the disclosure of production of waxy wheat grains. Finally, the Examiner relies on the book for the disclosure of the protein ranges of soft and hard wheat. The Examiner finally states "The Alderman product is dried so it [sic] expect the product is storage stable because ready-to-eat cereal has [sic] shelf life exceeding one year."

Claim 1 has been amended to include the limitation that the product is storage stable in the absence of additives that inhibit development of rancidity for at least six months. Support for this amendment is found in the specification on page 10 line 25 through page 11 line 5; page 17, lines 8-11; and claim 7 as originally filed.

Accompanying this response is a declaration under 37 C.F.R. §1.132 which contains a large body of data supporting the claimed differences between the present product and a product as disclosed in the primary reference Alderman. The present product as claimed in claim 1 is

unique in that it is a cooked buoyant wholegrain waxy wheat that is gelatinized throughout and is storage stable in the absence of additives that inhibit the development of rancidity for a period of at least six months or more. Products disclosed in Alderman are not whole grain, are not gelatinized throughout, and are not storage stable in the absence of additives that inhibit the development of rancidity. The Examiners blanket statement "The Alderman product is dried so it expect the product is storage stable because ready-to-eat cereal has shelf life exceeding one year." has no support. Those of ordinary skill in the art of food science readily understand and appreciate that cereals, and particularly whole grain cereals, are very susceptible to the development of rancidity upon storage. This is why a typical cereal includes a number of preservatives, special packaging, and other treatments all designed to maintain storage stability of the product. It is inappropriate for the Examiner to make such a blanket statement without pointing to any proof of the validity of that statement. Nowhere within Alderman or any of the other cited references is such a statement made, suggested or supported. The data disclosed in the accompanying declaration under 37 C.F.R. §1.132 makes it clear that there are vast differences between the product as claimed in claim 1 of the present invention and the product disclosed in Alderman related to the specific claim limitations of "whole grain waxy wheat", "gelatinized throughout", and "storage stable in the absence of additives that inhibit development of rancidity for a period of at least six months".

In the declaration it is disclosed that one of the inventors of the present invention, Lori Wilson, utilized a common lot and origin of whole grain waxy wheat and treated one portion according to the process disclosed in Alderman and one portion according to the process

disclosed in the present invention. The present claims are to the product and these results demonstrate that Applicants have developed a product that is different than the product disclosed in Alderman. It is not relevant that the present claims do not include processing steps they are directed toward a product and the evidence clearly demonstrates that the product of the present invention is different than the product of the Alderman disclosure.

The grains were treated as disclosed in paragraphs 6 and 7 of the declaration. The products were then tested for a variety of parameters related to specific limitations found within claim 1 of the present application. In paragraph 8 of the declaration the amount of measured insoluble fiber and total fiber in each of the products is compared. The fiber is found in the outer layer of the grain and a whole grain cereal, wherein the outer layer is preserved will have a higher fiber content than a grain that has been processed to remove part or all of the outer layer. Whole grain cereal is specifically defined as intact kernels or fractions thereof that contain the three parts of the whole grain namely the outer bran, the endosperm, and the germ. The results demonstrate that the Alderman product had a insoluble fiber level of only 6.29 weight percent and total fiber level of only 9.99 weight percent. The product of the present invention, by way of contrast, had an insoluble fiber level of 10.14 weight percent which is 161% of the value found in the grain according to Alderman and a total fiber level of 13.56 weight percent which is 135% of the total fiber found within Alderman. Clearly these results demonstrate that the Alderman product is not a whole grain waxy wheat as compared to the present invention and as claimed in claim 1 of the present application.

The gelatinization level of a cooked grain product can be measured in a number of ways known within the art. Specific ways of measuring the degree of gelatinization include water solubility, alkali solubility and rapid viscosity analysis. All three of these measures were performed on the product prepared according to the Alderman process and the product of the present invention. The results are disclosed in paragraph 9 of the accompanying declaration. By all measurements the Alderman product was not gelatinized to the extent of the present product and clearly not gelatinized throughout as required by claim 1. Specifically, the Alderman product had a much lower water solubility, a much lower alkali solubility, and a much higher rapid viscosity analysis level. All of these measures clearly demonstrate that the Alderman product is not only different from that of the present invention but that it is not gelatinized throughout as required by claim 1 of the present application.

The storage stability of the Alderman product was compared to that of the product of the present invention utilizing two protocols wherein the head space hexanal level was measured. Use of head space hexanal levels to detect rancidity is described in the specification on page 10, lines 4-13 and page 21, line 30 through page 23. The results are presented in Table 1 of paragraph 10 of the accompanying declaration. After four months of storage under ambient conditions the Alderman product had a head space hexanal level that was much higher than that of the present invention. Accelerated storage conditions designed to simulate longer term storage at ambient conditions in an accelerated fashion clearly delineate differences in the storage stability of the Alderman product compared to that of the present invention. Within two weeks of accelerated storage the Alderman product has a head space hexanal level that is 278%

higher than that of the present product and well on its way to rancidity. Within eight weeks of accelerated storage the Alderman product is clearly well beyond the industry standard of five ppm of head space hexanal which is a measure of clear rancidity of the product. The results presented in paragraph 10 of the accompanying declaration clearly demonstrate that the Alderman product is not storage stable in the absence of additives that inhibit development of rancidity while the product of the present invention clearly is storage stable in the absence of additives.

In summary, the data in the accompanying declaration clearly demonstrates that the disclosure in Alderman discloses a product that does not meet at least three limitations found within claim 1. There is no obviousness of the present invention in light of Alderman even when accompanied by the disclosures of Nakamura et al. and the book. Nakamura et al. merely discloses production of a waxy wheat and does not disclose any sort of a product let alone a product that is a cooked buoyant whole grain waxy wheat, gelatinized throughout, and storage stable in the absence of additives that inhibit development of rancidity for at least six months as required by claim 1. The inadequacies of the combination of Alderman with Nakamura et al. are not remedied by the disclosure of the book. The book merely discloses the protein levels of various types of wheat and does not disclose nor make obvious a cooked buoyant whole grain waxy wheat gelatinized throughout and storage stable in the absence of additives that inhibit development of rancidity for at least six months as required by claim 1. In summary, the cited references fail alone or in combination to disclose or make obvious a product as claimed in claim 1 of the present invention because they fail to disclose or make obvious a number of the

limitations found within claim 1. Thus, the rejection of claim 1 and the claims which depend therefrom under 35 U.S.C. §103(a) based on the cited references is improper and must be withdrawn.

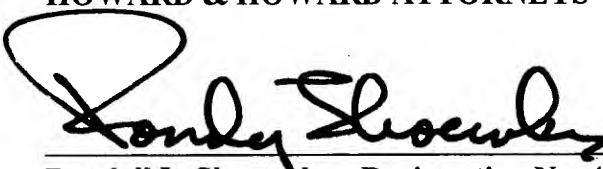
Applicants' attorney respectfully submits that the claims as amended are now in condition for allowance and respectfully requests such allowance.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS

3/23/05

Date



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